

**ZONING BOARD OF APPEALS**  
**MINUTES**  
**July 19, 2005**

**Draft**

**Members Present**

Barry Silverstein – Chairman  
Lynne Raver  
April Callahan

**Members Absent**

Maureen Kangas – Vice Chairman  
Ronald Critelli  
MaryAnn Leenig  
Marc Breimer

**Others Present**

Janis Gomez, Esq. – ZBA Attorney  
Edward Peters - Town Building Inspector

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Notice of Appeal Hearing was published in the Beacon Free Press, The Poughkeepsie Journal and the Southern Dutchess News.  
Notified of the variance requests were the Town Board, Town Fire/Building Inspector, Town Planning Board, New York State Department of Transportation, Dutchess County Department of Planning, Zoning Administrator and surrounding property owners.

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**The meeting of the Zoning Board of Appeals was called to order at 7:05 p.m. by the Chairman. He made announcements regarding the no smoking policy and the emergency exits and fire procedures.**

Chairman Silverstein called for comments or corrections to the minutes of the June meeting. Hearing none, he called for a motion to accept the minutes as written.

Lynne Raver made the motion to accept the minutes from the June 21, 2005 meeting.  
April Callahan seconded.

Motion Carried

Barry Silverstein - Aye  
Lynne Raver – Aye  
April Callahan – Aye

**Old Business**

**Continued Public Hearing for:**

Application Number ZB05-001, submitted by Lori Joseph Builders, is requesting the following variances; 1) front yard setback of 30ft where 35ft is the minimum 2) rear yard setback of 30ft where 40ft is the minimum 3) right yard setback of 15ft where 20ft is the minimum 4) lot size variance of 11,230sq ft where 20,000 is the minimum 5) lot depth of 100ft where 125ft is the minimum required in an R-20 Zoning District

Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill.

This request is made by the applicant, who seeks relief from the Zoning Administrator's decision regarding Chapter 150-33.A. of the Code of the Town of Fishkill, New York.

Chairman Silverstein advised the audience that Mitch Berkey, representing Lori Joseph Builders, requested an adjournment until the August 16 ZBA Meeting citing additional information required for their presentation was received too late to prepare for this meeting.

Chairman Silverstein called for a motion to adjourn the Public Hearing.

Motion to adjourn the Public Hearing made by Lynne Raver.

Seconded by April Callahan

Carried

Barry Silverstein

Lynne Raver

April Callahan

**New Business**

Application No. ZB05-010, submitted by David Gianna and Denise Zottola, requesting the following variances. 1) front yard setback of 42.9ft where 75ft is required, 2) side yard setback of 37.9ft where 50ft is required, 3) minimum lot size of 1.52 acres where 4 acres is the minimum and 4) access to the property from other than the a main road. Said requests are a violation of Chapters 150-33.A. and 150.26.A. of the Code of the Town of Fishkill.

No representation at first calling. The Chairman announced that the Board would wait for a few minutes to see if the applicant arrives.

The Applicant arrived at 7:15pm.

The Chairman read the following communication:

1. The Town of Fishkill Planning Board recognizes this as a matter of local concern encouraging the ZBA to keep the necessary variances to a minimum.
2. A letter from James Sgro objecting to the variance
3. Dutchess County Department of Planning citing this as a matter of local concern.

David Gianna and Denise Zottola-Gianna made the presentation to the Board.

Mrs. Gianna advised the Board that they are interested in the piece of property on Melzingah Dam Rd. They would like to construct an approximate 2000 sq. ft. 3 bedroom house single-family house. They have a child and are considering adopting a second.

Mrs. Gianna stated that they have lived in the Beacon area for seven years. She is originally from Orange County and David is from Manhattan. They are interested in constructing something that is “green” in the sense that it has geothermal heating and cooling and uses passive solar. They are not interested in having an oil burner. They want to minimize the impact on the land. The reason they like this piece is that it feels sylvan and is only three miles from the center of Beacon. They want to construct a house that has a lot of glass and very simple lines.

Mrs. Gianna stated that for the purposes of a building permit, they contracted an architect to create a building plan that they have. Everything about it is valid. The Gianna’s feel that the way he drew the outside of the house is a little stark for them. They decided rather than paying him to redraw the outside they would keep the drawings. Their plan would be less stark, more windows and possibly adding on a low roofline. Mr. Gianna advised that it may also be smaller.

Mr. Gianna displayed the drawings on the easel. He advised that starting with the elevations, as had been described, there will be simple lines. Starting with the east elevation it will be a single story home with the basement partially into the hill due to the land. It also helps with the insulation. The current plan has a roof top deck, minimizing the footprint. The plan incorporates a stairwell and a lot of glass on the west side to catch the views of the river. It is their understanding that it will not be very visible from the road. They also plan to keep as many trees as possible simply because they don’t want to maintain a lawn.

Mr. Gianna presented an overview drawing of the property outlining the house itself. It will be primarily rectangular with a slight L-shape to accommodate an enclosed stairwell. The site has been designed with swales around the house because they are building at the base of the mountain, there will be water draining in the springtime and they don’t want to block the flow that may cause damage to the home.

Mr. Gianna advised the Board that their use of retaining walls is at a minimum since the house functions as a retaining wall. There will be a retaining wall on the driveway on the southern part of the property and one on the north side of the house for a short distance.

Chairman Silverstein called for questions or comments from the Board Members.

Lynne Raver, questioning the style of the house, inquired as to what the other homes in the area looked like. Mrs. Gianna advised that there is a house very similar to it approximately ¼ down the road and two additional homes similar to it across the way directly on the river. She advised that this really isn’t a neighborhood. It is sparsely

populated since most of it is state land. Mrs. Gianna reiterated that the drawing does not have a roofline and they may want to have one for a more traditional look. She noted that it is expensive to maintain a home in this area, so they are looking into constructing the home to reduce what they would have to spend every month.

Chairman Silverstein asked what the total acreage was that they were looking to buy. Mrs. Gianna advised the total is 1.52 acres. The Chairman asked why they needed a 42 ft setback instead of the 75 ft required. Mr. Gianna stated that it was due to the slope of the property. Given the dimensions of the house, it is the minimum distance from the road. The Chairman requested information regarding the access from other than a main road. Mr. Gianna advised the main road is Route 9D. He stated that Janis (Gomez) is familiar code regarding access. Due to the topology of the property, it is not possible to access it from Route 9D without blasting and removing the rocks to create a 400 ft driveway parallel to both Route 9D and Melzingah Dam Rd. What they need is to build a short driveway that connects directly to Melzingah Dam Rd. The Chairman asked if the applicant had a drawing of the driveway. Mr. Gianna confirmed that he did and presented the drawing.

Janis Gomez asked what is considered the front of the property. Mr. Gianna replied that the front will be the east side facing Melzingah Dam Rd with a Melzingah Dam Rd address. Further down on the west side will be Route 9D. The driveway will be cut off Melzingah Dam Rd right where it makes a natural curve approximately at the point where the two original parcels were merged. It creates a minimal driveway space with less tree removal. Mr. Gianna stated that they do not anticipate paving the driveway since the road is not paved. It also introduces other drainage considerations. Mr. Gianna advised the Board that it is also how they were able to keep their footprint under 3% of the property. It is required to keep it less than 5% and they are under 3%. If they paved the driveway, the blacktop would have to be included in the property coverage.

Chairman Silverstein asked Janis Gomez if she was clear as to the front of the property. Ms. Gomes advised that she was.

Chairman Silverstein called for questions or comments from the floor.

Ethan Millrod, Melzingah Dam Rd, reminded the Board that the property had been in front of the Board last year and that he and another neighbor wrote letters objecting to the granting of any variances that would allow development of the parcel. He advised that this is not a good site for a house. It is a steep slope that takes on a lot of water and is directly above existing residents. Mr. Sgro's house is directly below this piece of property at the base of the mountain. Mr. Millrod quoted Mr. Sgro who commented that every winter and spring the ground becomes saturated with water flowing almost constantly into his basement. The proposed septic system has the sewage flowing down the mountain and ending up a few feet from his house. Mr. Sgro is asking if the variances are granted and the sewage water goes into his basement, will the Town of Fishkill be responsible.

Mr. Millrod advised that the property is a narrow strip of land squeezed between a paved highway, an active dirt road and a right-of-way. It is a severely undersized lot. It only has 38% of the required lot size for the area. There is no level area for parking or outside use near the proposed house site. Inevitably, the adjacent road and right-of-way will be used for such purposes creating an inconvenience and hazards especially in the winter.

Mr. Millrod quoted the Seeger's that occasionally the road is solid ice. It is a precarious place. With such a little setback from the proposed house, property damage and injury is possible. Parked cars and children might be present right where a snowplow could pass. This creates a needless and unnecessary liability for any number of parts, The Town of Fishkill, The City of Beacon, the builder, the seller, the neighbors, ourselves.

Mr. Millrod stated that the proposed house sited along the road is also a marked trail into the Hudson Highland State Park. The two other residences that use this road are sited well off on driveways that are not visible from this trail at any time of the year. The proposed house would not only be a visible presence on the road, it will not even meet the minimum setbacks.

Mr. Millrod reiterated that the Seeger's stated that residences in the nearby area are surrounded by the Hudson Highland State Park and most appropriate for this land use particularly with regards to setbacks. This proposal would add an element of congestion that is not fit to either the original zoning intent or this areas current use. The proposed development is right on the point of the public access to the park. The road is narrow, steep and fragile. Erosion, especially on the lower part is controlled by swales. The swales are subject to erosion from use. The residents make every effort to live there with minimal impact on the environment. They don't want to attract any additional use or change what is already there.

Mr. Millrod continued, advising that the granting of the variances to develop this lot may set a precedent that may allow the development of the other undersized lot owned by the same builder on the other side of Melzingah Rd. Many of the trees were clear cut last year down to Route 9D. If you go through the area now you will see that the erosion barriers have largely been broken and a mini ravine has developed and is trailing down to the Sgro's house.

Mr. Millrod advised that this is a tough hill to live on. He admires the applicant's intent and stated that he feels bad that he is opposing their request, but he feels that the applicant is not fully aware of concept of what it takes to live on that hill.

John Schwamp, Fishkill resident, asked how far the house will be from the actual road. Lynne Raver asked which road he was referring to. Mr. Schwamp advised he was referring to the east side of the house where the driveway is. Mr. Gianna advised that there are actually two numbers due to the fact that the property is oblong shaped. It is not a straight a property line since this was originally two parcels. One is diagonal. The original parcel, which is long and narrow and not suitable for development of a home, follows Melzingah Road. It comes to a point approximately 2/3 up the road where the smaller parcel existed. Where the home is being constructed, the property diverges. The

road takes a sharp turn to the right and the property line continues to the west. The remnants of an old road, circles the property and continues down past the Sgro's property below. Mr. Schwamp stated that the road is no longer accessible. Ethan Millrod stated that it was still a legal right-of-way. It was the original access road. Mr. Gianna stated that it would need some maintenance, but it could still be used.

Chairman Silverstein stated that the original question still needs to be answered. Mr. Gianna stated that the 37ft is from the property line. He does not have an accurate measurement to the road. There is somewhere between 30-40 feet. The corner of the house to the road will be close to 75 feet. The Southeast corner of the house will be 42.9 feet from the road.

Mr. Schwamp asked if there was going to be grading or excavating of the hillside to provide a flat area to build a house. He asked for approximate numbers regarding the linear sq. ft. that might have to be dug out. Mr. Gianna advised the dimensions of the house are approximately 30' x 60'. The elevation from one corner to another is 236' down to 230'. Most of the home's first floor will sit below ground. The house will cut into the hill. They are not creating a flat parcel of land. Mr. Schwamp asked what the linear cut was as opposed to the vertical cut. Mr. Gianna stated it would be approximately 61 ft including the foundation.

Mr. Schwamp asked if Mr. Gianna was going to live there or if this was going to be a spec house. Mr. Gianna advised that he was going to be the resident.

David Eberle expressed concern regarding development of the steep slope area. When you dig into the mountain to put up a structure, you significantly disturb the water flow pattern. He advised that one concern he has is where the water is going to flow. It might increase the erosion with water flowing down to the main road and in the other direction, if it is going to affect the house below.

Mr. Schwamp advised the Board that he would like to follow up on his statement. He asked what type of concrete would be used to make the foundation. Chairman Silverstein advised that those regulations will fall under the issuing of a building permit. The ZBA does not have the authorization to set the standard or to require specific materials to be used.

Mr. Schwamp asked if the ZBA had the authority to require a hydrological study prior to the applicant progressing to the building department. Janis Gomez advised that the ZBA has the authority under the steep slopes regulation in the Town Code to look at the slopes and in the past has had the Town Engineer look at drainage and flow issues.

David Eberle stated that the problem is that the lot is small. The other lots in the area are four acres which gives you more room, but this lot very small so when you try to build you will have to ask for variances. The lot is not a good building lot.

Ethan Millrod advised that his experience on the hillside is that the further you go down the mountain the more you come into the confluence of streams. Each season, down at the lower part of the road, springs come up from the road. He will create a ditch and the following year a ditch will have to be placed in another area. Mr. Millrod stated that he dug a plateau on his property and water came out where he dug.

Chairman Silverstein stated that when the previous question was asked regarding the legal mandate, he deferred to the attorney, but when the previous applicant was before the Board and the Board requested certain things, the intent from one of the Board members was to have the Town Engineer study the drainage issues and to give a report to the Board. The Chairman advised that he will probably ask for that report prior to any vote.

John Schwamp stated another concern is the viability of the structure. Any party involved would want to have a structure that would not be viable to the site based on the erosion or water flow in term of the long-term stability of the structure.

Donald Worthy, property owner, stated that his opinion is that this is a very capable piece of property to build on. They have two engineers, Bernard Lanza, who works for the Town, has been there and walked the property after a heavy rain and found it dry and Mr. Paegelow, the applicant's architect who has engineering in place. He understands the residents concerns and asked if anyone at the meeting was an engineer. David Eberle stated that he was. Mr. Worthy asked if he was a civil engineer or did land use.

Chairman Silverstein interrupted and advised that the Board appreciates his comments, however as far as any engineering is concerned, the Board will hear from the Town Engineer and everything will be taken into account. The Chairman stated that appeals can become very emotional with parties being either for or against it. As a Board the ZBA does not react to the emotional issues, the Board reacts to the legal issues. If the Town Engineer recommends it, and the ZBA, within the mandates of the Zoning Board, can or cannot make a decision, that's how it is done.

Donald Worthy made a statement that on one end of 9D he sees Toll Brothers building on state farmland, wetlands and on this end of 9D there is such a problem where there is one large development called Preserve, right near Dutchess Junction, the new firehouse. Mr. Worthy stated that this is just about a family having the opportunity to have what they want with a view of the historic Hudson River. They have everything in place and they have put forth the effort to try to get this done.

Chairman Silverstein agreed and advised that the residents of the area also have the right to express their concerns and what they may consider violations of the Town Code, then it is the responsibility of the ZBA to come to a decision at a later date.

John Schwamp asked where the septic system will be in relation to the other property. Chairman Silverstein replied that although it could be shown on the drawings, if the applicant gets the Board of Health's approval, it cannot be changed. They look at the drainage and everything and the ZBA cannot direct them where the septic goes.

Chairman Silverstein commented that this will make or break a lot of buildings when it comes up, because if the Board of Health says no, then it's a mute point. Mr. Schwamp asked if it has been approved. Both the Chairman and Mr. Worthy replied that it has.

Judith Solomon stated in listening to everything, that this is a geographic area with a minimum lot of four acres. To allow building on a lot this small will set a precedent. She stated that she feels very strongly that if the ZBA allows this to go through, that there will be a flurry of activity with the next year of people wanting to subdivide their parcels and it is a precedent.

Donald Worthy stated that he sits on the ZBA in Beacon and this issue is not about dividing property. This is a pre-existing property. This will not set a precedent. The applicant is asking for variances from the straight law. The property was divided the way it is many years ago. Ms. Solomon stated that the minimum is four acres. It may have already been divided some time ago but the minimum is four acres and that will set a precedent.

Chairman Silverstein commented that Ms. Solomon's opinion and statements are on the record, but the applicants are requesting a variance and the Board is hearing it. No decision will be made this evening.

Daniel Williams stated that he is a property owner on Melzingah Rd and he has no problem with couple who are requesting the variances. He stated that the ZBA will do their part regarding the legal bounds. Regarding the current residents, they don't seem to have any problems going up and down the mountain. Mr. Millrod made a statement with regards to what they have to do to go up and down the mountain. Mr. Williams stated that everybody can read into the situation, but he just wanted to express that he was for it.

Chairman Silverstein called for additional comments or questions from the floor.

Tinya Seeger stated that she was confused regarding what the total acres was. She stated that she thought combined it was 1.52. The Chairman advised that it was. Ms. Seeger stated that Mr. Williams mentioned a third piece. The Chairman verified with Mr. Gianna that his lot is 1.52 acres. He confirmed that it was. He displayed the plot plat showing the original lots not combined into one. The Chairman advised that Mr. William's lot has nothing to do with this lot.

Chairman Silverstein called for additional comments or questions from the floor.

Janis Gomez stated that in addition to the engineer, the requirement of the alternate access must be abutting a town road. What needs to be shown is the egress of fire trucks, police, ambulances and other emergency vehicles. The ZBA will need to send a fire inspector or someone from the fire district to check the property. If they are not able to access the property the variance cannot be granted



Chairman Silverstein advised that with the prior application, a member of the Board was part of the Rombout Fire Commissioners and it was covered extensively. The ZBA is already aware of certain items that will need to be addressed.

Donald Worthy asked if they could be contacted when the fire department or chief goes to the property so that they can explain where the house is going to be. Janis Gomez advised that someone would have to be there to explain it to them.

Lynne Raver asked Ms. Gomez to repeat what the fire department was going to look at. Ms. Gomez stated that they look at, in accordance with State and Town Law that, in order to have access to a parcel that is not from a state improved road, you have to get a variance. To get a variance you have to show that you have emergency access and legal access. They do have legal access through their deed. It needs to be shown that fire and other emergency vehicles can access it.

John Schwamp asked what emergency provisions are in place for the current residents. Janis Gomez advised that the access to the current residents is not relevant to this application. The houses may have been there prior to zoning and before these laws were in place. Although it is an interesting question, the issue is only this house and this access.

Chairman Silverstein commented that some of the houses may have been built prior to there being a fire district.

Mr. Schwamp cited fire codes and regulations regarding the property and national park associations since in 1982.

Chairman Silverstein commented that the ZBA goes through all of the legal procedures to get the correct information prior to making a decision.

Chairman Silverstein called for additional comments or questions. Hearing none, he called for a motion to adjourn the Public Hearing.

Motion to adjourn the Public Hearing made by Lynne Raver.

Seconded by April Callahan

Carried

Barry Silverstein

Lynne Raver

April Callahan

Chairman Silverstein called for any new or additional business. Hearing none, he requested a motion to adjourn the ZBA Meeting.

**April Callahan made the motion to adjourn.**

**Lynne Raver seconded.**

**Motion carried.**

**Meeting adjourned at 7:58 pm.**

Respectfully submitted,  
Nancy Fitzgerald-Lecker  
ZBA Clerk